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HJ JAAFAR HJ HASHIM & ORS

v.

ROHANI AB LATIP

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HIGH COURT MALAYA, MELAKA
LOW HOP BING J
[CIVIL APPEAL NO: 1-12-25-2004]
21 FEBRUARY 2006

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TORT: *Trespass - Trespass to land - Demolishing house occupied by hardcore poor and building new house thereon - Demolition and replacement without consent of owner of house - Whether there was trespass - Whether defendants liable for damages*

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The plaintiff is the registered owner of an undivided share in a piece of land in Serkam, Jasin, Melaka ('the land'). On the land the plaintiff built a semi-permanent house which was occupied by the 8th defendant. In May 2001, the 1st to 6th defendants, the members of the Village Development and Security Committee ('the Committee'), without the consent of the plaintiff, but with the consent of the 8th defendant,

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demolished the plaintiff's house and replaced it with a permanent house. It was not in dispute that the permanent house was built under a housing scheme known as Poor Citizens Housing Project ('the project house'). The plaintiff nonetheless contended that it was unlawful of the Committee to have demolished her house, and in the circumstances filed

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a claim for special damages of RM10,000 and also for general damages against the Committee. On 13 May 2004, the Sessions Court ruled that what the defendants or the Committee did constituted trespass in law, and in the circumstances allowed the plaintiff's claim. The defendants appealed and argued that there could not be any trespass since the 8th defendant had consented to the demolition and since their objective was

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only to help alleviate the problems of the poor.

Held (dismissing the appeal):

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(1) Defendant 8 is a mere licencee who has neither been the owner of the land nor the semi permanent house. Defendant 8 therefore has no legal capacity to give consent to the defendants to enter the land, or to carry out demolition of the house which is the plaintiff's property, however dilapidated the house might appear to be. (para 18)

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(2) Whilst the defendants might have the best of intentions and the most laudable objectives in demolishing the plaintiff's house and replacing it with the project house, consent of the plaintiff owner is indispensable. The defendants' demolition exercise without the plaintiff's consent therefore constituted trespass in law, thereby giving rise to the remedy of damages to the aggrieved owner. (para 19)

[Decision of trial judge affirmed.]

Legislation referred to:
Courts of Judicature Act 1964, s. 28(1)
Federal Constitution, art. 13

For the plaintiff - Yusof Rahmat; M/s Yusof Rahmat & Co
For the defendants - Md Latip Sarrugi; M/s Mohd Latip & Assoc

Reported by Rose Aziz

JUDGMENT

Low Hop Bing J:

Appeal

[1] This is an appeal by the appellants-defendants ("the defendants") against the decision of the learned sessions court judge ("the trial judge") who had on 13 May 2004 given judgment in favour of the plaintiff in the sum of RM10,000 by way of special damages with interest at 4% p.a. from the date of judgment to the date of realisation, general damages to be assessed and costs of RM248.

Finding Of Facts

[2] The relevant finding of facts by the trial judge may be narrated as follows:

[3] Defendants 1 to 6 are the members of the JKKK ie, Kampung Development and Security Committee ("the committee"), while defendant 7 was at all material time and currently is the state assemblyman for Serkam Melaka and also an Executive Councillor in the state of Melaka. Defendant 8 is the occupant of the house which is the subject matter herein.

[4] With effect from 5 May 1997, the plaintiff became the registered owner of 5/8 undivided share in the land held under MCL 554 Lot 1194 in the mukim of Serkam district of Jasin ("the land") which was purchased through her husband (SP2) from the former owners Hj. Wahab bin Mohamad (deceased) and Ismail bin Hamid at a consideration of RM14,000.

[5] On the land, the plaintiff has at her own expense built a semi-permanent house which was occupied by defendant 8 ("the house").

[6] In the month of May 2001, without the consent and permission of the plaintiff, the committee had demolished the house so as to replace it with another house under the Projek Perumahan Rakyat Termiskin (the Poor Citizens Housing Project) ("the project").

[7] The plaintiff claims special damages of RM10,000 for the house, in addition to general damages arising from the demolition.

Right To Appeal

[8] By way of a preliminary objection, it was submitted by Mr. Yusof Rahmat learned counsel for the respondent that the value of the subject matter in this appeal is RM10,000 and so under s. 28(1) of the Courts of Judicature Act 1964 ("s. 28(1)"), the defendants could only appeal on a question of law.

[9] Datuk Hj. Md. Latip bin Sarrugi learned counsel for the defendant contended to the contrary.

[10] The short answer to this preliminary objection is to be found in the order of the trial court against which this appeal was preferred. The order and the appeal against it were not merely confined to the value of RM10,000. The RM10,000 represented special damages only. The order also includes general damages to be assessed by the trial court.

[11] Section 28(1), *supra*, reads as follows:

> **28 Civil appeals from subordinate courts**
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> (1) Subject to any other written law, no appeal shall lie to the High Court from a decision of a subordinate court in any civil cause or matter where the amount in dispute or the value of the subject-matter is ten thousand ringgit or less except on a question of law.

[12] On a plain reading of s. 28(1), I am unable to find any substance in the submission presented for the plaintiff. I have no difficulty in dismissing the preliminary objection. I hold that the value of the subject matter in this appeal is far beyond the scope of s. 28(1), in which case the "question of law" requirement does not apply to the defendants' statutory right of appeal.

Trespass

[13] In essence, it was contended for the defendants that:

1. Defendant 8 was at the material time occupying an old house and so there was no reason for the plaintiff to spend RM10,000 to build a semi permanent house for defendant 8 to stay in, adding that there were three stages of the building occupied by defendant 8 *viz* first the old house built on the land prior to April 1997, secondly the (semi-permanent) house for which the plaintiff has spent RM10,000 and finally the project house, which was built on the same site covering the same area;

2. Defendant 8 was occupying the project house as a licensee for life, during which no one including the plaintiff could interfere with defendant 8's occupation of the project house, which would only revert to the plaintiff upon the demise of defendant 8, and so the plaintiff has incurred no loss of RM10,000, as has been erroneously found by the trial judge;

3. In any event, after five years the value of the (semi permanent) house would have depreciated to less than the RM10,000 expended by the plaintiff as the cost of construction thereof; and

4. Defendants 1 to 7 could not be said to have committed trespass on the plaintiff's land as they have entered the land with defendant 8's consent.

[14] In response, it was argued for the plaintiff that as against the defendants, the plaintiff has succeeded in establishing trespass to the plaintiff's house and is therefore entitled to the special and general damages awarded by the trial judge.

[15] While I do commend the efforts of the defendants' learned counsel for raising the aforesaid submissions, I am of the view that the question for determination in this appeal is whether the trial judge has occasioned any error in her decision in holding that the defendants had committed trespass to the house which had been demolished by the defendants and that the plaintiff was entitled to the award of special and general damages.

[16] In my view, the specific finding of fact by the trial judge as alluded to above is sufficiently supported by the weight of evidence adduced at the trial. In fact, this finding of fact is not amenable to dispute as the defendants in para 6(d) of their statement of defence has pleaded as follows:

A (d) Bila rumah separuh kekal itu uzur dan usang, Defendan-Defendan untuk meringankan beban keluarga Defendan Kelapan dan anak-anaknya yang hidup dalam suasana yang cukup dhaif yang amat memerlukan pembelaan, berdasarkan kepada peruntukan sebanyak RM10,000 dibawah Penyelaras Program Perumahan Rakyat Termiskin ("P.P.R.T.") menggantikan Rumah Berkenaan (separuh kekal) dengan
B sebuah rumah baru kekal (rumah batu).

[My translation:

When the semi permanent house was dilapidated, and with a view to reducing the burden of defendant 8 and his children who were living
C within a very pathetic scenario which really needed protection, and having regard to the allocation of RM10,000 available under the Poor Citizen's Housing Project (P.P.R.T.), the defendants had replaced the semi permanent house with a new permanent house (brick house).]

D **[17]** Paragraph 6(d) is in effect an admission by the defendants that the defendants had demolished the house and replaced it with the project house.

[18] Even by accepting the defendants' submission that defendant 8 has given his consent to the other defendants to enter the land, defendant 8
E is a mere licensee who has neither been the owner of the land nor the (semi permanent) house. Defendant 8 has no legal capacity to give any consent to the defendants to enter the land; or to carry out demolition of the house which is the plaintiff's property, however dilapidated the house might have appeared to be. The consent can only be given by
F the plaintiff as the registered owner of the land and the house.

[19] I have no doubt whatsoever that all the defendants have been actuated by the best of intentions and the most laudable of objectives in demolishing the house and replacing it with the Project house as this
G would most certainly have alleviated the problems of the poor including defendant 8. However, the consent of the owner ie, the plaintiff is indispensable as the plaintiff shall not be deprived of her property (the house) save in accordance with the law: art. 13 of the Federal Constitution. In my view, the defendants' demolition exercise without the plaintiff's consent constitutes trespass in law, thereby giving rise to the
H remedy of damages to the aggrieved party ie, the plaintiff.

[20] In the circumstances, I am unable to find any error in the trial judge's decision.

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Conclusion

[21] On the foregoing grounds, I hold that this appeal is without merit, which I hereby dismiss, with the result that the above decision of the trial judge is affirmed.

Costs

[22] As the plaintiff's preliminary objection based on s. 28(1) has not been sustained and the defendants' appeal pertaining to the issue of trespass has been dismissed, I am of the view that in relation to costs, the parties' respective position has been placed in equilibrium, in which case, I order the parties to bear their own costs respectively.